

AMENDED IN SENATE MARCH 19, 1998

SENATE BILL

No. 1650

Introduced by Senator Kelley

February 13, 1998

An act to amend Sections 3068.1, 3071, 3072, 3073, and 3074 of the Civil Code, and to amend Sections 22670 and 22851.12 of the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

SB 1650, as amended, Kelley. Vehicles: lien sales.

Existing law provides one lien sale procedure for vehicles that have been determined to have a value of \$2,500 or less and a different lien sale procedure for vehicles that have been determined to have a value exceeding \$2,500.

This bill would increase the \$2,500 amount to \$4,000, thus making one of the existing lien sale procedures applicable to vehicles valued at \$4,000 or less, and the other existing lien sale procedure applicable to vehicles valued at over \$4,000.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3068.1 of the Civil Code is
2 amended to read:
3 3068.1. (a) Every person has a lien dependent upon
4 possession for the compensation to which the person is
5 legally entitled for towing, storage, or labor associated
6 with recovery or load salvage of any vehicle subject to

1 registration that has been authorized to be removed by
2 a public agency, a private property owner pursuant to
3 Section 22658 of the Vehicle Code, or a lessee, operator,
4 or registered owner of the vehicle. The lien is deemed to
5 arise on the date of possession of the vehicle. Possession
6 is deemed to arise when the vehicle is removed and is in
7 transit, or when vehicle recovery operations or load
8 salvage operations have begun. A person seeking to
9 enforce a lien for the storage and safekeeping of a vehicle
10 shall impose no charge exceeding that for one day of
11 storage if, 24 hours or less after the vehicle is placed in
12 storage, the vehicle is released. If the release is made
13 more than 24 hours after the vehicle is placed in storage,
14 charges may be imposed on a full, calendar-day basis for
15 each day, or part thereof, that the vehicle is in storage. If
16 a request to release the vehicle is made and the
17 appropriate fees are tendered and documentation
18 establishing that the person requesting release is entitled
19 to possession of the vehicle, or is the owner's insurance
20 representative, is presented within the initial 24 hours of
21 storage, and the storage facility fails to comply with the
22 request to release the vehicle or is not open for business
23 during normal business hours, then only one day's charge
24 may be required to be paid until after the first business
25 day. A "business day" is any day in which the lienholder
26 is open for business to the public for at least eight hours.
27 If the request is made more than 24 hours after the vehicle
28 is placed in storage, charges may be imposed on a
29 full-calendar day basis for each day, or part thereof, that
30 the vehicle is in storage.

31 (b) If the vehicle has been determined to have a value
32 not exceeding four thousand dollars (\$4,000), the lien
33 shall be satisfied pursuant to Section 3072. Lien sale
34 proceedings pursuant to Section 3072 shall commence
35 within 15 days of the date the lien arises. No storage shall
36 accrue beyond the 15-day period unless lien sale
37 proceedings pursuant to Section 3072 have commenced.
38 The storage lien may be for a period not exceeding 60
39 days if a completed notice of a pending lien sale form has
40 been filed pursuant to Section 3072 within 15 days after

1 the lien arises. Notwithstanding this 60-day limitation, the
2 storage lien may be for a period not exceeding 120 days
3 if any one of the following occurs:

4 (1) A Declaration of Opposition is filed with the
5 department pursuant to Section 3072.

6 (2) The vehicle has an out-of-state registration.

7 (3) The vehicle identification number was altered or
8 removed.

9 (4) A person who has an interest in the vehicle
10 becomes known to the lienholder after the lienholder has
11 complied with subdivision (b) of Section 3072.

12 (c) If the vehicle has been determined to have a value
13 exceeding four thousand dollars (\$4,000) pursuant to
14 Section 22670 of the Vehicle Code, the lien shall be
15 satisfied pursuant to Section 3071. The storage lien may
16 be for a period not exceeding 120 days if an application for
17 an authorization to conduct a lien sale has been filed
18 pursuant to Section 3071.

19 (d) Any lien under this section shall be extinguished,
20 and no lien sale shall be conducted, if any one of the
21 following occurs:

22 (1) The lienholder, after written demand to inspect
23 the vehicle made by either personal service or certified
24 mail with return receipt requested by the legal owner or
25 the lessor, fails to permit the inspection by the legal
26 owner or lessor, or his or her agent, within a period of time
27 of at least 24 hours, but not to exceed 72 hours, after the
28 receipt of that written demand, during the normal
29 business hours of the lienholder. The legal owner or lessor
30 shall comply with inspection and vehicle release policies
31 of the impounding public agency.

32 (2) The amount claimed for storage exceeds the
33 posted rates.

34 SEC. 2. *Section 3071 of the Civil Code is amended to*
35 *read:*

36 3071. (a) A lienholder shall apply to the department
37 for the issuance of an authorization to conduct a lien sale
38 pursuant to this section for any vehicle with a value
39 determined to be over ~~two thousand five hundred dollars~~
40 ~~(\$2,500)~~ *four thousand dollars (\$4,000)*. A filing fee shall

1 be charged by the department and may be recovered by
2 the lienholder if a lien sale is conducted or if the vehicle
3 is redeemed. The application shall be executed under
4 penalty of perjury and shall include all of the following
5 information:

6 (1) A description of the vehicle, including make, year
7 model, identification number, license number, and state
8 of registration. For motorcycles, the engine number ~~shall~~
9 also *shall* be included. If the vehicle identification
10 number is not available, the ~~Department of Motor~~
11 ~~Vehicles~~ *department* shall request an inspection of the
12 vehicle by a peace officer, licensed vehicle verifier, or
13 departmental employee before accepting the
14 application.

15 (2) The names and addresses of the registered and
16 legal owners of the vehicle, if ascertainable from the
17 registration certificates within the vehicle, and the name
18 and address of any person whom the lienholder knows, or
19 reasonably should know, claims an interest in the vehicle.

20 (3) A statement of the amount of the lien and the facts
21 ~~which~~ *that* give rise to the lien.

22 (b) Upon receipt of an application made pursuant to
23 subdivision (a), the department shall do all of the
24 following:

25 (1) Notify the vehicle registry agency of a foreign state
26 of the pending lien sale, if the vehicle bears indicia of
27 registration in that state.

28 (2) By certified mail, send a notice, a copy of the
29 application, and a return envelope preaddressed to the
30 department to the registered and legal owners at their
31 addresses of record with the department, and to any
32 other person whose name and address is listed in the
33 application.

34 (c) The notice required pursuant to subdivision (b)
35 shall include all of the following statements and
36 information:

37 (1) An application has been made with the
38 department for authorization to conduct a lien sale.

39 (2) The person has a right to a hearing in court.

1 (3) If a hearing in court is desired, a Declaration of
2 Opposition form, signed under penalty of perjury, shall
3 be signed and returned to the department within 10 days
4 of the date that the notice required pursuant to
5 subdivision (b) was mailed.

6 (4) If the Declaration of Opposition form is signed and
7 returned to the department, the lienholder shall be
8 allowed to sell the vehicle only if he or she obtains a court
9 judgment ~~or~~ if he or she obtains a subsequent release
10 from the declarant or if the declarant, cannot be served
11 as described in subdivision (e).

12 (5) If a court action is filed, the declarant shall be
13 notified of the lawsuit at the address shown on the
14 Declaration of Opposition form and may appear to
15 contest the claim.

16 (6) The person may be liable for court costs if a
17 judgment is entered in favor of the lienholder.

18 (d) If the department receives the Declaration of
19 Opposition form in the time specified, the department
20 shall notify the lienholder within 16 days of the receipt of
21 the form that a lien sale shall not be conducted unless the
22 lienholder files an action in court within 30 days of the
23 department's notice under this subdivision. A lien sale of
24 the vehicle shall not be conducted unless judgment is
25 subsequently entered in favor of the lienholder or the
26 declarant subsequently releases his or her interest in the
27 vehicle. If a money judgment is entered in favor of the
28 lienholder and the judgment is not paid within five days
29 after becoming final, then the judgment may be enforced
30 by lien sale proceedings conducted pursuant to
31 subdivision (f).

32 (e) Service on the declarant in person or by certified
33 mail with return receipt requested, signed by the
34 declarant or an authorized agent of the declarant at the
35 address shown on the Declaration of Opposition form,
36 shall be effective for the serving of process. If the
37 lienholder has served the declarant by certified mail at
38 the address shown on the Declaration of Opposition form
39 and the mail has been returned unclaimed, or if the
40 lienholder has attempted to effect service on the

1 declarant in person with a marshal, sheriff, or licensed
2 process server and the marshal, sheriff, or licensed
3 process server has been unable to effect service on the
4 declarant, the lienholder may proceed with the judicial
5 proceeding or proceed with the lien sale without a
6 judicial proceeding. The lienholder shall notify the
7 ~~Department of Motor Vehicles~~ *department* of the
8 inability to effect service on the declarant and shall
9 provide the ~~Department of Motor Vehicles~~ *department*
10 with a copy of the documents with which service on the
11 declarant was attempted. Upon receipt of the notification
12 of unsuccessful service, the ~~Department of Motor~~
13 ~~Vehicles~~ *department* shall send authorization of the sale
14 to the lienholder and send notification of the
15 authorization to the declarant.

16 (f) Upon receipt of authorization to conduct the lien
17 sale from the department, the lienholder shall
18 immediately do all of the following:

19 (1) At least five days, but not more than 20 days, prior
20 to the lien sale, not counting the day of the sale, give
21 notice of the sale by advertising once in a newspaper of
22 general circulation published in the county in which the
23 vehicle is located. If there is no newspaper published in
24 the county, notice shall be given by posting a Notice of
25 Sale form in three of the most public places in the town
26 in which the vehicle is located and at the place where the
27 vehicle is to be sold for 10 consecutive days prior to and
28 including the day of the sale.

29 (2) Send a Notice of Pending Lien Sale form 20 days
30 prior to the sale but not counting the day of sale, by
31 certified mail with return receipt requested, to each of
32 the following:

33 (A) The registered and legal owners of the vehicle, if
34 registered in this state.

35 (B) All persons known to have an interest in the
36 vehicle.

37 (C) The department.

38 (g) All notices required by this section, including the
39 notice forms prescribed by the department, shall specify
40 the make, year model, vehicle identification number,

1 license number, and state of registration, if available, and
2 the specific date, exact time, and place of sale. For
3 motorcycles, the engine number shall also be included.

4 (h) No lien sale shall be undertaken pursuant to this
5 section unless the vehicle has been available for
6 inspection at a location easily accessible to the public for
7 at least one hour before the sale and is at the place of sale
8 at the time and date specified on the notice of sale. Sealed
9 bids shall not be accepted. The lienholder shall conduct
10 the sale in a commercially reasonable manner.

11 (i) Within 10 days after the sale of any vehicle pursuant
12 to this section, the legal or registered owner may redeem
13 the vehicle upon the payment of the amount of the sale,
14 all costs and expenses of the sale, together with interest
15 on the sum at the rate of 12 percent per annum from the
16 due date thereof or the date when that sum was advanced
17 until the repayment. If the vehicle is not redeemed, all
18 lien sale documents required by the department shall
19 then be completed and delivered to the buyer.

20 (j) Any lien sale pursuant to this section shall be void
21 if the lienholder does not comply with this chapter. Any
22 lien for fees or storage charges for parking and storage of
23 a motor vehicle shall be subject to Section 10652.5 of the
24 Vehicle Code.

25 *SEC. 3.* Section 3072 of the Civil Code is amended to
26 read:

27 3072. (a) For vehicles with a value determined to be
28 four thousand dollars (\$4,000) or less, the lienholder shall
29 apply to the department for the names and addresses of
30 the registered and legal owners of record. The request
31 shall include a description of the vehicle, including make,
32 year, model, identification number, license number, and
33 state of registration. If the vehicle identification number
34 is not available, the Department of Motor Vehicles shall
35 request an inspection of the vehicle by a peace officer,
36 licensed vehicle verifier, or departmental employee
37 before releasing the names and addresses of the
38 registered and legal owners and interested parties.

39 (b) The lienholder shall, immediately upon receipt of
40 the names and addresses, send, by certified mail with

1 return receipt requested or by United States Postal
2 Service Certificate of Mailing, a completed Notice of
3 Pending Lien Sale form, a blank Declaration of
4 Opposition form, and a return envelope preaddressed to
5 the department, to the registered owner and legal owner
6 at their addresses of record with the department, and to
7 any other person known to have an interest in the vehicle.
8 The lienholder shall additionally send a copy of the
9 completed Notice of Pending Lien Sale form to the
10 department by certified mail on the same day that the
11 other notices are mailed pursuant to this subdivision.

12 (c) All notices to persons having an interest in the
13 vehicle shall be signed under penalty of perjury and shall
14 include all of the following information and statements:

15 (1) A description of the vehicle, including make, year
16 model, identification number, license number, and state
17 of registration. For motorcycles, the engine number shall
18 also be included.

19 (2) The specific date, exact time, and place of sale,
20 which shall be set not less than 31 days, but not more than
21 41 days, from the date of mailing.

22 (3) The names and addresses of the registered and
23 legal owners of the vehicle and any other person known
24 to have an interest in the vehicle.

25 (4) All of the following statements:

26 (A) The amount of the lien and the facts concerning
27 the claim which gives rise to the lien.

28 (B) The person has a right to a hearing in court.

29 (C) If a court hearing is desired, a Declaration of
30 Opposition form, signed under penalty of perjury, shall
31 be signed and returned to the department within 10 days
32 of the date the Notice of Pending Lien Sale form was
33 mailed.

34 (D) If the Declaration of Opposition form is signed
35 and returned, the lienholder shall be allowed to sell the
36 vehicle only if he or she obtains a court judgment or if he
37 or she obtains a subsequent release from the declarant or
38 if the declarant cannot be served as described in
39 subdivision (e).

1 (E) If a court action is filed, the declarant shall be
2 notified of the lawsuit at the address shown on the
3 Declaration of Opposition form and may appear to
4 contest the claim.

5 (F) The person may be liable for court costs if a
6 judgment is entered in favor of the lienholder.

7 (d) If the department receives the completed
8 Declaration of Opposition form within the time specified,
9 the department shall notify the lienholder within 16 days
10 that a lien sale shall not be conducted unless the
11 lienholder files an action in court within 30 days of the
12 notice and judgment is subsequently entered in favor of
13 the lienholder or the declarant subsequently releases his
14 or her interest in the vehicle. If a money judgment is
15 entered in favor of the lienholder and the judgment is not
16 paid within five days after becoming final, then the
17 judgment may be enforced by lien sale proceedings
18 conducted pursuant to subdivision (f).

19 (e) Service on the declarant in person or by certified
20 mail with return receipt requested, signed by the
21 declarant or an authorized agent of the declarant at the
22 address shown on the Declaration of Opposition form,
23 shall be effective for the serving of process. If the
24 lienholder has served the declarant by certified mail at
25 the address shown on the Declaration of Opposition form
26 and the mail has been returned unclaimed, or if the
27 lienholder has attempted to effect service on the
28 declarant in person with a marshal, sheriff, or licensed
29 process server and the marshal, sheriff, or licensed
30 process server has been unable to effect service on the
31 declarant, the lienholder may proceed with the judicial
32 proceeding or proceed with the lien sale without a
33 judicial proceeding. The lienholder shall notify the
34 Department of Motor Vehicles of the inability to effect
35 service on the declarant and shall provide the
36 Department of Motor Vehicles with a copy of the
37 documents with which service on the declarant was
38 attempted. Upon receipt of the notification of
39 unsuccessful service, the Department of Motor Vehicles
40 shall send authorization of the sale to the lienholder and

1 shall send notification of the authorization to the
2 declarant.

3 (f) At least 10 consecutive days prior to and including
4 the day of the sale, the lienholder shall post a Notice of
5 Pending Lien Sale form in a conspicuous place on the
6 premises of the business office of the lienholder and if the
7 pending lien sale is scheduled to occur at a place other
8 than the premises of the business office of the lienholder,
9 at the site of the forthcoming sale. The Notice of Pending
10 Lien Sale form shall state the specific date and exact time
11 of the sale and description of the vehicle, including the
12 make, year model, identification number, license
13 number, and state of registration. For motorcycles, the
14 engine number shall also be included. The notice of sale
15 shall remain posted until the sale is completed.

16 (g) No lien sale shall be undertaken pursuant to this
17 section unless the vehicle has been available for
18 inspection at a location easily accessible to the public at
19 least one hour before the sale and is at the place of sale at
20 the time and date specified on the notice of sale. Sealed
21 bids shall not be accepted. The lienholder shall conduct
22 the sale in a commercially reasonable manner. All lien
23 sale documents required by the department shall be
24 completed and delivered to the buyer immediately
25 following the sale.

26 (h) Any lien sale pursuant to this section shall be void
27 if the lienholder does not comply with this chapter. Any
28 lien for fees or storage charges for parking and storage of
29 a motor vehicle shall be subject to Section 10652.2 of the
30 Vehicle Code.

31 ~~SEC. 3.—~~

32 *SEC. 4.* Section 3073 of the Civil Code is amended to
33 read:

34 3073. The proceeds of a vehicle lien sale under this
35 article shall be disposed of as follows:

36 (a) The amount necessary to discharge the lien and
37 the cost of processing the vehicle shall be paid to the
38 lienholder. The cost of processing shall not exceed
39 seventy dollars (\$70) for each vehicle valued at four
40 thousand dollars (\$4,000) or less, or one hundred dollars

1 (\$100) for each vehicle valued over four thousand dollars
2 (\$4,000).

3 (b) The balance, if any, shall be forwarded to the
4 Department of Motor Vehicles within 15 days of any sale
5 conducted pursuant to Section 3071 or within five days of
6 any sale conducted pursuant to Section 3072 and
7 deposited in the Motor Vehicle Account in the State
8 Transportation Fund, unless federal law requires these
9 funds to be disposed in a different manner.

10 (c) Any person claiming an interest in the vehicle may
11 file a claim with the Department of Motor Vehicles for
12 any portion of the funds from the lien sale that were
13 forwarded to the department pursuant to subdivision (b).
14 Upon a determination of the Department of Motor
15 Vehicles that the claimant is entitled to an amount from
16 the balance deposited with the department, the
17 department shall pay that amount determined by the
18 department, which amount shall not exceed the amount
19 forwarded to the department pursuant to subdivision (b)
20 in connection with the sale of the vehicle in which the
21 claimant claims an interest. The department shall not
22 honor any claim unless the claim has been filed within
23 three years of the date the funds were deposited in the
24 Motor Vehicle Account.

25 ~~SEC. 4.—~~

26 SEC. 5. Section 3074 of the Civil Code is amended to
27 read:

28 3074. The lienholder may charge a fee for lien sale
29 preparations not to exceed seventy dollars (\$70) in the
30 case of a vehicle having a value determined to be four
31 thousand dollars (\$4,000) or less and not to exceed one
32 hundred dollars (\$100) in the case of a vehicle having a
33 value determined to be greater than four thousand
34 dollars (\$4,000), from any person who redeems the
35 vehicle prior to disposal or is paid through a lien sale
36 pursuant to this chapter. These charges may commence
37 and become part of the possessory lien when the
38 lienholder requests the names and addresses of all persons
39 having an interest in the vehicle from the Department of
40 Motor Vehicles. Not more than 50 percent of the

1 allowable fee may be charged until the lien sale
2 notifications are mailed to all interested parties and the
3 lienholder or registration service agent has possession of
4 the required lien processing documents. This charge shall
5 not be made in the case of any vehicle redeemed prior to
6 72 hours from the initial storage.

7 ~~SEC. 5.—~~

8 *SEC. 6.* Section 22670 of the Vehicle Code is amended
9 to read:

10 22670. For lien sale purposes, the public agency
11 causing the removal of the vehicle shall determine if the
12 estimated value of the vehicle that has been ordered
13 removed, towed, or stored is three hundred dollars (\$300)
14 or less, over three hundred dollars (\$300) but four
15 thousand dollars (\$4,000) or less, or over four thousand
16 dollars (\$4,000).

17 If the public agency fails or refuses to put a value on, or
18 to estimate the value of, the vehicle within three days
19 after the date of removal of the vehicle, the garage keeper
20 specified in Section 22851 or the garage keeper's agent
21 shall determine, under penalty of perjury, if the
22 estimated value of the vehicle that has been ordered
23 removed, towed, or stored, is three hundred dollars
24 (\$300) or less, over three hundred dollars (\$300) but four
25 thousand dollars (\$4,000) or less, or over four thousand
26 dollars (\$4,000).

27 ~~SEC. 6.—~~

28 *SEC. 7.* Section 22851.12 of the Vehicle Code is
29 amended to read:

30 22851.12. The lienholder may charge a fee for lien-sale
31 preparations not to exceed seventy dollars (\$70) in the
32 case of a vehicle having a value determined to be four
33 thousand dollars (\$4,000) or less and not to exceed one
34 hundred dollars (\$100) in the case of a vehicle having a
35 value determined to be greater than four thousand
36 dollars (\$4,000), from any person who redeems the
37 vehicle prior to disposal or is sold through a lien sale
38 pursuant to this chapter. These charges may commence
39 and become part of the possessory lien when the
40 lienholder requests the names and addresses of all persons

1 having an interest in the vehicle from the department.
2 Not more than 50 percent of the allowable fee may be
3 charged until the lien sale notifications are mailed to all
4 interested parties and the lienholder or the registration
5 service agent has possession of the required lien
6 processing documents. This charge shall not be made in
7 the case of any vehicle redeemed prior to 72 hours from
8 the initial storage.

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